

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2006-107-WS - ORDER NO. 2006-593

OCTOBER 16, 2006

IN RE: Application of United Utility Companies, Inc. for Adjustment of Rates and Charges and Modifications to Certain Terms and Conditions for the Provision of Water and Sewer Service) ORDER REJECTING SETTLEMENT AND DENYING APPLICATION FOR AN INCREASE IN RATES AND CHARGES
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I. INTRODUCTION

This matter before the Public Service Commission of South Carolina (“Commission”) arises under the authority of S.C. Code Ann. §§ 58-3-140 (Supp. 2005), 58-5-210 (1976) and 58-5-240 (Supp. 2005) and is governed by 26 S.C. Code Ann. Regs. 103-512.4 (Supp. 2005), 103-712.4 (1976 and Supp. 2005), and 103-804 *et seq.* (1976 and Supp. 2005).

On August 23, 2006, the Commission received a Motion for Settlement Hearing and for Approval of Settlement Agreement (“the Settlement Agreement” or “Set. Agr.”) between United Utility Companies, Inc. (“United” or “the Company”) and the Office of Regulatory Staff (“ORS”) regarding an application for a rate increase filed with the Commission by United. Subsequently, the intervenors in the case submitted letters agreeing to the terms of the settlement. On August 28, 2006, the Settlement Agreement was presented to the Commission. Further, testimony from members of the public was presented. On September 8, 2006, the Commission held a settlement hearing with the

presentation of evidence to determine whether the terms of the settlement were just and reasonable. Regrettably, in both the Settlement Agreement and in the hearing, the Parties failed to provide the Commission with sufficient evidence to determine whether the rates applied for by United are just and reasonable. Therefore, the Settlement Agreement is rejected, and for the same reasons, the application is denied.

II. PROCEDURAL HISTORY

On April 10, 2006, United filed the application for a rate increase which gave rise to these proceedings. During the period April 27, 2006-May 1, 2006, United published Notices of Filing of the Application in newspapers of general circulation and notified the Company's customers individually as instructed by the Commission's Docketing Department. Petitions to Intervene were received from North Greenville University ("NGU") and Greenville Timberline South Carolina, LLC ("Greenville Timberline").¹ Numerous letters of protest were received.²

On August 23, 2006, United and ORS filed the proposed Settlement Agreement with the Commission. NGU and Greenville Timberline later joined in the Agreement. In support of the Agreement, the Parties submitted the prefiled written direct testimonies of witnesses Dawn M. Hipp, Lena Sunardio, and Bruce T. Haas, including all exhibits attached to these testimonies, along with portions of the prefiled rebuttal and supplemental rebuttal testimony of Bruce T. Haas. In addition, the Parties submitted the

¹ United, ORS, NGU, and Greenville Timberline are collectively referred to in this Order as the "Parties." Each entity may be individually referred to as a "party."

² It is the Commission's procedure to include all letters received pertaining to a proposed rate increase in the application's docket file.

prefiled surrebuttal testimony and supporting exhibit of Dawn M. Hipp, and the testimony of Christina L. Seale, containing Settlement Audit Exhibits CLS-1 through CLS-11. Lastly the Parties submitted the Settlement testimony of witnesses B.R. Skelton, Ph.D. and Converse A. Chellis, III, CPA. The testimonies of Skelton and Chellis were supplemented on August 25, 2006. However, the Parties limited the number of witnesses subject to live testimony before the Commission; they only called witnesses Skelton and Chellis to the stand, and moved to stipulate the prefiled written testimonies of the remaining witnesses. Explanatory Brief (Expl. Br.) at 2 (dated August 23, 2006).

On August 28, 2006, a hearing was held before this Commission wherein the parties announced the Settlement Agreement. Further, the Commission heard testimony from various public witnesses.³

On September 6, 2006, after reviewing the Settlement Agreement and its stipulated prefiled written testimonies, the Commission brought specific concerns regarding the agreement to the attention of the Parties. In a directive on this date, the Commission alerted the Parties to unanswered questions in the record regarding: 1) the Company's response to public witness' reports of sewer backups and the maintenance of its lines; 2) the Company's proposed flat rate billing tariff for sewerage services; 3) the Company's response to complaints about its billing and collection practices, including allegations that customers had been billed for prior service to previous occupants of their residences, and that the Company had placed "orange tags" on the mailboxes of certain customers in Spartanburg County whom the Company believed to be delinquent in the

³ In addition, five public hearings were held to hear the public's concerns. See Section III, infra.

payment of their bills; and 4) the Company's compliance with PSC regulations that require reporting of violations of DHEC standards in light of violations indicated on ORS inspection reports appended to the prefiled written testimony supporting the settlement. Comm. Directive (dated September 6, 2006) (attached as Exhibit A to this Order).

On September 8, 2006, this Commission held an evidentiary hearing on the Settlement Agreement. John M.S. Hoefer, Esquire, and Benjamin Mustian, Esquire, represented United. Nanette S. Edwards, Esquire, Shannon B. Hudson, Esquire, and C. Lessie Hammonds, Esquire, represented the Office of Regulatory Staff. Rebecca H. Zabel, Esquire, represented North Greenville University. Greenville Timberline did not appear. The Company called only expert witnesses Skelton and Chellis to testify in support of the settlement.

Skelton testified generally that the return on equity proposed in the Settlement Agreement is a sufficient return which the capital market would expect in the context of a settlement, that administrative economy supports Commission approval of the proposed settlement, and that settlements should be favored. Tr. 23-24 (Vol. 1, Transcript of September 8, 2006 hearing). Chellis generally testified that the settlement was a reasonable means of resolving the disputed issues in the case, and that it fairly balanced the interests of the Company and its customers. Tr. 13-14 (Vol. 1, Transcript of September 8, 2006 hearing). Neither witness provided testimony concerning the unresolved issues of fact previously raised by the Commission related to the proceeding. Both witnesses testified specifically that they had no knowledge or opinion as to several of these issues. Tr. 17-19, 28 (Vol. 1, Transcript of September 8, 2006 hearing).

Faced with unresolved questions of fact remaining in the record, and a lack of evidence presented by the Parties, the Commission declined to approve the Settlement Agreement. Comm. Directive (September 8, 2006). Following the Commission's rejection of the Settlement Agreement, a final hearing in the case was rescheduled for September 25, 2006.⁴ Id. The Commission observed that the Company had the option of either requesting approval of the rates agreed to in its settlement (presumably with the support of additional evidence) or requesting that the Commission approve the rates and charges for which it originally applied.⁵ Id. United advised the Commission of its position that "the Parties have presented to the Commission all evidence that they believe is necessary for the Commission to issue an order on the Settlement Agreement, no additional evidence in the docket is needed inasmuch as UUC would not offer any evidence beyond that already presented to the Commission, and therefore no further hearing is necessary." United Letter (dated September 20, 2006). The ORS concurred. ORS also informed the Commission that North Greenville University did not seek a hearing in this matter. ORS Letter (dated September 20, 2006). Subsequent to these communications from the Parties, the Commission cancelled the hearing scheduled for September 25, 2006. On September 27, the Commission voted to deny United's application. Comm. Directive (dated September 27, 2006).

⁴ The law requires the Commission to issue a final order in a rate case within six months of the filing of the application. S.C. Code Ann. § 58-5-240 (Supp. 2005).

⁵ This choice was also contemplated by the Parties in paragraph 12 of the Settlement Agreement, which provides "if the Commission should decline to approve the agreement in its entirety, then any Party desiring to do so may withdraw from the Settlement Agreement without penalty or obligation."

III. RULING ON UNITED'S OBJECTIONS

A. United's Objections to the Commission's Consideration of Public Testimony Are Not Consistent with the Commission's Duties in the Rate Setting Process, and are Overruled.

Public hearings were held in this Docket on July 17, 18, and 24, 2006 and August 7 and 8, 2006. A settlement hearing was held on August 28, 2006. United made several objections to public witness testimony during these proceedings. At each of the hearings, United raised a continuing objection to the Commission receiving customer testimony, documents, and related exhibits "consisting of unsubstantiated complaints regarding customer service, quality of service, or customer relation issues." Tr. 7-8 (Vol. 1); Tr. 6-7 (Vol. 2); Tr. 5-6 (Vol. 3); Tr. 6-7 (Vol. 4); Tr. 5-6 (Vol. 5). United argues that the Commission's reliance on public testimony denies it due process of law, permits customers to circumvent complaint procedures, and is an inappropriate basis for the adjustment of just and reasonable rates. Tr. 7 (Vol. 1); Tr. 6-7 (Vol. 2); Tr. 5 (Vol. 3); Tr. 6-7 (Vol. 4); Tr. 5-6 (Vol. 5). In support of these arguments, United cites Patton v. Public Service Commission, 280 S.C. 288, 312 S.E.2d 257 (1984), the Order in the Court of Common Pleas in Tega Cay Water Service v. S.C.P.S.C. C/A No. 97-CP-40-0923 (September 25, 1998), and the Commission's Order No. 1999-191 in Application of Tega Cay Water Service, Inc, Docket No. 96-137-WS. Id. However, these cases do not support United's general argument that the Commission has denied it due process, nor do the cases stand for the proposition that the Commission's complaint process was unlawfully circumvented when the Commission heard public testimony regarding customer service complaints.

First, there has been no due process violation. The Company had the opportunity to file responses to its customers' testimony, and it did so. United Letter (dated August 23, 2006). See also Haas Rebuttal Testimony, Exhibit A to Settlement Agreement. In addition, the Company had the opportunity to cross-examine witnesses and took advantage of that opportunity. Tr. 26-27, 30, 34, 39, 49-51 (Vol. 1); Tr. 11 (Vol. 2); Tr. 19, 38-45, 54-55 (Vol. 3); Tr. 29-30, 44 (Vol. 4); Tr. 16, 21, 25-26 (Vol. 5).

Second, no circumvention of complaint procedures occurred. The evening public hearings held in this case were for the express purpose of garnering public opinion regarding the proposed rate increase. In a rate proceeding, "quality of service" is a long-established element of what this Commission must consider in arriving at just and reasonable rates for the Company. See Patton v. Public Service Commission, supra. Customers' complaints regarding the Company's service are a component of "quality of service." Furthermore, nothing in the Commission's statutory authority or regulations indicates that the customer complaint-filing process is the exclusive vehicle for raising issues regarding a company's quality of service. See 26 S.C. Code Ann. Regs. 103-835 (1976).⁶

It is ORS' position that the challenged customer testimony is admissible in these proceedings. Tr. 8-9 (Vol. 1); Tr. 7-8 (Vol. 2); Tr. 6-7 (Vol. 3); Tr. 7-8 (Vol. 4); Tr. 6-7 (Vol. 5). The ORS also argues that the cases cited by United fail to support its grounds for objection. Id. In addition, ORS requested that United submit letters to the

⁶ The regulation states in pertinent part: "Any person complaining of anything done or omitted to be done by any person under the statutory jurisdiction of the Commission in contravention of any statute, rule, regulation or order administered or issued by the Commission, may file a written complaint with the Commission, requesting a formal proceeding..." S.C. Code Ann. Regs. 103-835 (1976).

Commission specifying objectionable portions of public testimony and the specific reasons for its opposition.⁷ Id.

The Commission holds that public testimony may be admitted into the record of these proceedings. The cases cited by United merely stand for the principle that, while customer service is a factor to be considered in determining a reasonable rate of return in a rate proceeding, a reduction in rates based on poor quality of service must be supported by substantial evidence in the record, must not be confiscatory, and must remain within a fair and reasonable range. Patton, 312 S.E.2d at 260 (“the Commission must be allowed the discretion of imposing reasonable requirements on its jurisdictional utilities to insure that adequate and proper service will be rendered to the customers of the utility companies.”). Each of the cases cited by United is discussed in greater detail below.

⁷ On August 22, 2006, United responded to ORS’s request to produce a letter specifying its objections to certain public testimony and the reasons for its opposition by filing a letter with the Commission. In this letter, United restates its continuing objection to public testimony for the reasons that it denies due process and unlawfully circumvents complaint procedures. It then proceeds to simply list the witnesses it opposes under this blanket objection. In the letter’s closing, without referencing specific witnesses, United states general reasons for the objection, which include assertions that “customers’ testimony does not reflect the timeframe of the issues complained of, whether the customers complained to the company, or whether the customers filed a formal complaint with the Commission.” It ends by stating that the amount of customers heard at the public hearings is a small percentage of its customers, and it considers this level of customer complaints as “de minimis and immaterial.”

As a state agency charged with setting rates that are just and reasonable, the South Carolina Public Service Commission considers all customer complaints in some fashion. This consideration of public testimony is most readily apparent in Hilton Head Plantation Utilities v. The Public Service Commission of South Carolina, 312 S.C. 448, 441 S.E.2d 321 (1994), where the Commission’s denial of a water company’s rate increase, based in part on the testimony of only one customer, was upheld by South Carolina’s Supreme Court. At a minimum such testimony has the potential of making the Commission aware of areas in which a company needs to provide more evidence before granting a rate increase.

Also, the particular objections which United has made to public hearing testimony are not specific. When United states its grounds for excluding public testimony (such as a complaint being stale if it is outside the time frame of the test year or the Company not having an opportunity to rectify a problem if a complaint was never made to the Company) it fails to connect these grounds to a customer’s specific testimony. An appellant must make a specific objection to the admission of evidence to preserve the issue for appeal. Abba Equipment, Inc. v. Thomason 335 S.C. 477, 486, 517 S.E.2d 235, 240 (S.C. App., 1999) (citing McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 479 S.E.2d 67 (Ct.App.1996)).

In Patton, the South Carolina Supreme Court affirmed the premise that quality of service is a “[necessary]” factor among other considerations in determining a just and reasonable operating margin when approving a rate increase. Id. (citing State Ex rel. Util. Com’n v. General Tel. Co., 285 N.C. 671, 208 S.E.2d 681 (1974)). In this case, a company offering sewerage services appealed a Commission’s rate determination that approved a lower rate increase than what the company requested. Id. The South Carolina Supreme Court found that “[determining] a fair operating margin is peculiarly within the province of the Commission and cannot be set aside in the absence of showing that it is unsupported by substantial evidence in the record.” Id. at 258. To reach this finding, the Court noted that S.C. Code Ann. § 58-5-210 (1976) vests the Commission with authority to supervise and regulate the rates and service of every utility in the state. It concluded that substantial evidence in the record existed to support the Commission’s concern regarding the Company’s quality of service.

Next, the Order in the Court of Common Pleas in Tega Cay Water Service v. S.C.P.S.C. resulted from an appeal by Tega Cay Water Services, Inc. of Commission Order No. 96-879 (the “TCWS Order”). This Circuit Court opinion expands the holding in Patton by maintaining that customer testimony related to poor quality of service, if not corroborated by other substantial evidence in the record, fails to support a Commission order giving an insufficient rate of return. The operating margin in the TCWS case was 0.23%, which prevented the utility from recovering expenses and the capital costs of doing business, according to the Court. TCWS Order at 6.

In the TCWS case, the Commission admitted that the Company's return was insufficient but argued that such a low return was warranted by customer complaints about the quality of service rendered by the Company. Id. However, the Circuit Court stated that the Commission made this determination solely on the complaints of six customers out of a total customer base of 1,500 people, despite the Commission's staff finding that TCWS provided acceptable service. Id. at 2-7. The Circuit Court held that these six customer complaints were not sufficient, alone, to support the Commission's determination. It further held that the Commission may not credit testimony such as "dirty water" as evidence of poor service quality, and must explicitly find the service was substandard according to some ascertainable criteria. See Id. at 7-8.

In reversing the Commission's Order, the Circuit Court went on to state that the Commission failed to satisfactorily provide a standard for determining what constitutes adequate service or indicate what increases in rates would have been approved had the services been found adequate. Id. at 8. It remanded the case with instructions for the Commission to set a rate that was not confiscatory and remained within a fair and reasonable range. See Id. at 6-7, 9. On remand in Order No. 1999-191, the Commission avoided relying on customer complaints. Order on Remand at 1.

The logic of the cases cited by United is evident after considering the standard of review the Commission is held to in the appellate process. Justice Harwell stated the standard of review succinctly in Patton v. Public Service Commission:

Pursuant to S.C. Code Ann. § 1-23-380 (1982), a court may not substitute its judgment for that of the Commission as to the weight of the evidence on the question of fact. The findings of the Commission are presumptively correct and have the force and effect of law. South Carolina Electric and

Gas Co. v. Public Service Commission, 275 S.C. 487, 272 S.E.2d 793 (1980). Therefore, the burden of proof is on the party challenging an order of the Commission to show that it is unsupported by substantial evidence and that the decision is clearly erroneous in view of the substantial evidence on the whole record. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). The Public Service Commission is recognized as the “expert” designated by the legislature to make policy determinations regarding utility rates; thus the role of the court reviewing such decisions is very limited. See, e.g. Southern Bell Tel. and Tel. Co. v. Public Service Comm., 270 S.C. 590, 244 S.E.2d 278 (1978) 312 S.E.2d at 259.

Under this standard of review, it is necessary for the Commission to base its findings on substantial evidence that is supported by the record in order for courts to look back and know that Commission decisions are grounded on fact.

With this mandate in mind, the Commission does not agree with United’s apparent argument that these cases stand for the proposition that the Commission is not entitled to consider the testimony and evaluate the credibility of public witnesses in the ratemaking process. United essentially argues that the testimony of public witnesses is “unsubstantiated” and therefore may not be considered. Tr. 7-8 (Vol. 1); Tr. 6-7 (Vol. 2); Tr. 5-6 (Vol. 3); Tr. 6-7 (Vol. 4); Tr. 5-6 (Vol. 5). However, neither the cases cited by United, nor other precedents in rate cases, support such a conclusion. If this argument were accepted, there would be no purpose for public hearings, admittedly a result advantageous to a company such as United, which has been subjected to a great deal of criticism by its customers, but also a result which is contrary to Supreme Court precedent, which has recognized the role of public testimony in the rate making process. Patton, 312 S.E.2d at 260; Seabrook Island Property Owners Association v. South Carolina Public Service Commission, 303 S.C. 493, 401 S.E.2d 672, 675 (1991) (stating “It is

incumbent upon the PSC to approve rates which are just and reasonable...considering the price at which the company's service is rendered and the quality of that service.") At a minimum, public testimony may alert the Commission to potential quality of service issues and prompt it to engage in further inquiry.

Other concerns expressed by customers, such as those about the fairness of the flat rate structure, do not depend on such an evidentiary foundation. These concerns are conceptual in nature and based on the Company's proposed rates. United cannot complain that testimony regarding these latter topics is "unsubstantiated" because the testimony is rooted in the company's own application.

B. United's Other Objections Pertain to Testimony Which Was Not Considered by the Commission.

United lodged two remaining objections during the public hearings in these proceedings concerning the testimony of Mary Ponease Gosnell and Alvin F. Simpson, Jr. During the public hearing held on July 17, 2006, Gosnell offered a letter to the Commission that was prepared by one of her neighbors. Tr. 48-49 (Vol. 1). United objected to this letter on the basis of hearsay. *Id.* at 49. Since this letter was not prepared by Gosnell and the person who did prepare the letter was not in attendance for cross examination, this objection is sustained. This letter is not considered part of the record in this case, and its contents had no impact on the Commission's determination to deny United's application for a rate increase.

Simpson testified at the public hearing held on July 24, 2006. Tr. 20-45 (Vol. 3). During his testimony, the Commission invited Simpson to reappear at the merits hearing scheduled in this docket to address any remaining questions resulting from the technical

information that he gave. Id. at 35. CWS objected to Simpson reappearing before the Commission on the basis that his testimony at both the public hearing and the merits hearing is cumulative. See Id. 35-36. This objection was mooted when the Settlement Agreement was presented to the Commission on September 8, 2006, and Simpson offered no further testimony.

IV. DISCUSSION

A. The Commission Has the Duty to Independently Review the Settlement Agreement Proposed by the Parties.

In its Directive issued on September 6, 2006, the Commission alerted the Parties to its concerns about the rates proposed in the Company's application and the quality of its service and that the Commission wished to consider these issues in the course of the case. The Parties were either unable or unwilling to address these issues to the Commission's satisfaction, and therefore the Commission is left with no choice but to reject United's application.

The Commission has the statutory mandate under S.C. Code Ann. Section 58-5-210 (1976) to fix just and reasonable standards and, therefore, just and reasonable rates. See Seabrook Island Property Owners Ass'n. v. South Carolina Public Service Com'n, supra, ("It is incumbent upon the Public Service Commission to approve rates which are just and reasonable....") 303 S.C. at 499, 401 S.E. 2d at 675. See also Kiawah Property Owners Group v. The Public Service Com'n of South Carolina, 357 S.C. 232 593 S.E. 2d 148 (2004).⁸ Because S.C. Code Ann. Section 58-5-240(H) (Supp. 2005) requires the

⁸ The Commission's statutory duties to independently review an application for adjustment of rates and base its ultimate ruling upon competent record evidence were not diminished with the passage of the 2004 reforms which created the Office of Regulatory Staff and reformed certain aspects of practice

Commission to approve “fair” rates that are “documented fully in its findings of fact... based exclusively on reliable, probative, and substantial evidence on the whole record” the Commission invited the Parties to provide additional evidence addressing certain concerns raised in the course of the several public hearings conducted in this case, and also within the body of testimony submitted by the Parties themselves in support of the proposed settlement. Unfortunately, in spite of the Commission’s request, the Parties have failed or refused to provide the requested evidence.

The Commission’s duty to independently review an application has been recognized by the South Carolina Supreme Court. In Hilton Head Plantation Utilities, Inc. v. Public Service Com’n of South Carolina, *supra*, a public witness raised questions at the hearing about the reasonableness of payments from the utility to certain affiliated companies. During the course of the Hilton Head Plantation case, the applicant had asserted, without further explanation, that the payments were reasonable. The Commission staff and the Consumer Advocate (whose advocacy roles have since been assumed by the ORS) did not challenge the payments.

However, the Commission became concerned about the affiliate transactions after hearing from a public witness in the case who challenged their reasonableness. Because

before the PSC. Act 175 clearly did not include any explicit repeal of Section 58-5-210, and the South Carolina Supreme Court very recently reiterated the longstanding rule that implied repeal is extraordinary and disfavored under South Carolina law:

Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation. Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (1994). Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them.

Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 141-42, 628 S.E.2d 38, 41 (2006) (citing City of Rock Hill v. South Carolina DHEC, 302 S.C. 161, 167, 394 S.E.2d 327, 331 (1990)).

the Parties had not actively contested the issue, the record contained virtually no information which would allow the Commission to independently determine the appropriateness of the applicant's transactions with its affiliated companies. The Commission denied the company's rate increase explaining:

The Commission believes that [public witness] Pilsbury's statement raises questions about seemingly less-than-arms-length transactions taking place between Hilton Head Plantation Utilities, Inc. and Hilton Head Plantation Limited Partnership. **The Commission holds that the record before it fails to provide the answers to these questions.**

312 S.C. at 449, 441 S.E.2d at 322. (emphasis added)

Affirming the Commission, the Supreme Court explained:

The PSC must review and analyze intercompany dealings and determine if they are reasonable; if there is an absence of data and information from which the reasonableness and propriety of the services rendered and the reasonable cost of rendering such services can be ascertained, the allowance is properly refused. Id.

312 S.C. at 449, 441 S.E.2d at 322.

The Court affirmed the Commission's denial of the rate increase, and remanded the case so that the Commission could pursue the issue of payments to affiliated companies in more depth. The Supreme Court explained:

Conceivably the Utility may be entitled to that increase or some other increase. We hold that neither the circuit court nor the Commission erred in refusing the rate increase sought. The matter might be logically pursued within this action upon remand or by way of a new application as suggested by the Commission. Under the showing made, we think it more logical to remand the case to the Commission so that the Utility will have an ample opportunity to explain its expenditures and justify them

312 S.C. at 451-452, 441 S.E.2d at 323.

The Hilton Head Plantation opinion affirms the Commission's right of independent inquiry. In Hilton Head Plantation, as in the present case, the Commission independently inquired of an issue raised by a public witness. The Commission pursued its inquiry in spite of the fact that the parties to the case were not contesting the issue of affiliate transactions; it was only raised by a public witness. Faced with a lack of information which addressed its concerns, the Commission was left with no choice but to deny the applicant's proposed rate increase.

B. The Commission's Inquiries Were Essential to its Evaluation of the Proposed Rates.

This case is unusual because if the Parties had provided a meaningful response to the Commission's concerns, it is possible that the proposed settlement rates would have been approved.⁹ Yet, the Parties consciously chose not to respond to the Commission's inquiries, leaving the Commission with no choice but to reject the settlement and the Company's application based on the lack of evidence presented.¹⁰ The course taken by

⁹ While the circumstances of this case are unusual, they are not unprecedented. The Commission recently rejected a settlement for similar reasons in Docket No. 2006-92-WS, Carolina Water Service, Application for Adjustment of Rates and Charges.

¹⁰ The Commission's view of its role in the settlement process was well known to the Parties from the outset of this case. The Commission adopted and disseminated Settlement Policies and Procedures (Revised 6/13/2006). These procedures, which were specifically endorsed by the Office of Regulatory Staff, (See letter of C. Dukes Scott dated April 3, 2006) expressly contemplated that the Commission could request more evidence in the process of approving a settlement. According to Section II of this document, approval of a settlement "shall be based upon substantial evidence in the record." However, as described above, substantial evidence is plainly lacking in this case.

Section III of the Settlement Policies and Procedures provides that "Proponents of a proposed settlement carry the burden of showing that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. Proponents of the settlement should be prepared to call witnesses and argue in favor of the settlement." Nevertheless, the proponents of the settlement in the present case simply failed to carry the burden of showing that the settlement is reasonable or in the public interest.

Section IV of the Policies and Procedures further states that "If the Commission rejects the settlement, the matter shall continue, as though no settlement had been presented." In addition, this section

the Parties has caused the central issue in this case to be as much about the Commission's authority and discretion in ratemaking proceedings as about the particulars of the Company's application and its rates and service.

While the law is clear that the Commission's decisions are to be given substantial deference by a reviewing court, such deference is not without limits. The South Carolina Supreme Court has found that the law requires the Commission to make specific and detailed findings of fact to support its conclusions:

In determining a fair rate of return on common equity. . . , PSC must fully document its findings of fact and base its decision on reliable, probative, and substantial evidence on the whole record.

An administrative body must make findings which are sufficiently detailed to enable this Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings. Where material facts are in dispute, the administrative body must make specific, express findings of fact. An administrative agency is not required to present its findings of fact and reasoning in any particular format, although the better practice is to present them in an organized and regimented manner. However, a recital of conflicting testimony followed by a general

contemplates a merits hearing to be held after rejection of a settlement. The Parties had the opportunity to more fully present their case at a merits hearing, if they chose to do so. Regrettably, the Parties simply chose not to provide the requisite evidence necessary for the Commission to make a determination on the merits of the application.

Finally, Section V of the Settlement Procedures provides that "The Commission may require evidence of any facts stipulated, notwithstanding the stipulation of the Parties." In the present case, although provided with an opportunity, the Parties chose to ignore the directives of this Commission to provide additional information. Section V notes, "If the Commission finds that the record lacks substantial evidence to support the settlement, the Commission may establish procedures for the purpose of receiving additional evidence upon which a decision on the proposed settlement may reasonably be based."

The Commission attempted to provide such procedures after the initial rejection of the settlement. However, the Parties rejected the procedures, and simply indicated that they did not wish to present any more evidence in support of the case, even after further discussion with the Hearing Officer explaining the intent of the procedures.

In sum, although the Parties claimed to have filed their August 23, 2006 Explanatory Brief and Joint Motion for Settlement Hearing and for Adoption of Settlement Agreement pursuant to "the Settlement Policies and Procedures established by the Public Service Commission", it was actually filed in derogation of those policies.

conclusion is patently insufficient to enable a reviewing court to address the issues.

Porter v. S.C. Public Service Com'n and BellSouth Telecommunications, Inc., 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998) (internal citations omitted).

Consistent with its obligations, the Commission's questions in this case, as posed in its directive of September 6, 2006, requested information that is pertinent to the Commission's review of the proposed settlement as well as the Company's application in this case. Following is a detailed discussion of the Commission's requests, the Parties' responses, and the significance of the information to this rate making proceeding.¹¹

1. Request for information on sewer backups.

As the result of questions raised at the Commission's public hearings, the Commission posed questions to the Company on whether it kept records of reported backups in its sewer systems. Further, the Commission asked about how many complaints of sewer backups were received within the test year and how these were resolved. In addition, the Commission inquired of the efforts by United to prevent sewer backups, and what measures the Company employed to prevent sewer problems, and how they compare to industry standards. United failed to provide any information to this Commission on these matters.

The incidence of sewer backups, the Company's response, and its preventive measures are relevant components of the "quality of service" that the Commission must examine to determine if proposed rates are just and reasonable. Failure of the Parties to provide this information simply leaves us in doubt as to the Company's ability to deal

¹¹ Similar issues were examined in Order No. 2006-543, Docket No. 2006-92-WS (Carolina Water Service) at 20-29.

with such backups and as to the quality of service of the Company. If United believes these reports to be erroneous, or de minimis, it should be able to establish as much through testimony. In fact, the Commission's inquiries seek to address those very issues by asking the Company to provide a broader context to the public complaints. Unfortunately, the Company's failure to provide the information prevents the Commission from considering a complete picture of the Company's customer service when deciding the justness and reasonableness of the Company's rates.

2. Request for information regarding the proposed flat rate fee structure for sewerage services.

As the result of witnesses complaining about the Company's flat rate fee structure at the Commission's public hearings, the Commission requested information as to United's flat rate charges for residential sewer service. Specifically, the Commission directed the Parties to explain why the Commission should find that flat-rate sewage billing is just and reasonable, and why the Parties believe that a flat-rate billing scheme is superior to one based upon individual usage. Several customers at the public hearings raised inquiries about the fairness of the flat rates, questioning why a single person should pay the same rate for sewer as the rate that a family pays.¹² The Parties failed to furnish any information in response to these questions. Some states follow an established policy of disfavoring flat rate billing.¹³ South Carolina determines whether a flat rate

¹² See, e.g., testimony of Andrew Wiseman, Gaffney hearing, Tr. 48-55 (Vol. 3), testimony of Robin Johnson, Greenville hearing, Tr. 10-14 (Vol. 4), testimony of Joe Metts, Spartanburg hearing, Tr. 11 (Vol. 1), testimony of John M. Davis, Jr., Spartanburg hearing, Tr. 16 (Vol. 1).

¹³ See e.g. In re Sanibel Bayous Utility Corp. 2003 WL 21383689, Fla.P.S.C., Jun 09, 2003, (NO. 020439-SU, 020331-SU, PSC-03-0699-PAA-SU) ("It has been our practice that, whenever possible, a flat rate structure is converted to a base facility and gallonage charge rate structure in order to promote state

billing structure is just and reasonable on a case by case basis. Again, without this information and/or evidence, the Commission could not make the proper determination.

3. Request for information regarding billing and collections practices.

In its September 6, 2006 directive, the Commission requested information from the Company with regard to its billing and collections practices. The Commission had heard several customer complaints of questionable billing and collections practices in the public hearings held in connection with the Company's application; specifically, these customers complained of having been billed for prior service to previous occupants of their residences¹⁴, and that Company employees were marking the mailboxes of some customers with orange tags indicating that their sewer service would be terminated due to delinquency in payment.¹⁵

These allegations are troubling. First, with regard to the alleged billing of customers for prior services to previous customers at the same address, the Commission notes that S.C. Code Ann. Regs. 103-536 (Supp. 2005) and 103-736 (Supp. 2005) prohibit sewerage and water service providers, respectively, from refusing service to customers based upon non-payment for services by previous occupants of the premises.

conservation goals and to eliminate subsidization of those who use excessive amounts of water by those who do not. However, it appears that the base facility and gallonage charge rate structure is not economically feasible for this wastewater utility”) but see Re Gibbs Ranch Sewer Co., 40 CPUC 2d 761, Cal.P.U.C., Jul 24, 1991, (NO. 91-07-043, 90-09-032) (A sewer utility was directed to implement uniform flat rates for residential customers, and to eliminate any additional charges based on the number of bedrooms on the premises).

¹⁴ See, e.g., testimony of Tammy Sell, Spartanburg hearing, Tr. 20-26 (Vol. 1), testimony of Ponease Gosnell, Spartanburg hearing, Tr. 44-48 (Vol. 1).

¹⁵ See, e.g., testimony of Tammy Sell, Spartanburg hearing, Tr. 20-26 (Vol. 1).

Second, the Commission is concerned about the allegations that Company representatives had a practice of placing orange tags on customer mailboxes to indicate scheduled disconnection of service due to delinquency of their accounts. If this practice is taking place, its implications are disturbing, and reflects poorly on the Company's service. The Commission notes that in other contexts, the General Assembly has recognized that the public disclosure of information affecting customers' reputation for creditworthiness is an indication of unconscionable debt collection practices. See, S.C. Code Ann. Section 37-5-108(5)(d) (Rev. 2002) (applying to consumer credit transactions).

The Commission specifically requested in its September 6 directive that the Company address these allegations. The Company offered only a conclusory denial that it billed customers for service to previous occupants in Haas' written testimony, submitted in support of the settlement. The Company did not speak at all to the public testimony that it had a practice of placing orange tags on the mailboxes of customers with delinquent accounts. No witnesses were called at the hearing to testify or answer questions about these issues, and no other documentation was offered to support Mr. Haas' summary denial of the allegations. Due to lack of evidence on these billing and collections issues, the Commission is unable to make the necessary determinations of whether the allegations are true, and if so, whether the rates proposed in the settlement are just and reasonable in light of the Company's conduct.

4. Request for information regarding DHEC violations.

In its September 6, 2006 directive, the Commission made two requests for additional information pertaining to certain issues brought about as a result of the testimony of ORS witness Dawn Hipp. Ms. Hipp's testimony indicated that the Company had previously entered into a Consent Agreement with DHEC in connection with certain violations of state and federal pollution control laws at the Company's Briarcreek I wastewater treatment facility in Cherokee County, but that no report of these violations was made to the Public Service Commission. Ms. Hipp testified that the Company had thereby failed to fulfill its obligations under S.C. Code Ann. Regs. 103-514(C) and 103-714(C). (Hipp Direct Testimony, pp. 5-6). Ms. Hipp's supporting exhibits further indicated that in the most recent DHEC Compliance inspection reports for two United facilities in Anderson and Greenville Counties, DHEC rated those facilities as "Unsatisfactory" regarding the Company's compliance with the agency's regulations. Yet, in her Exhibit DMH-3 (a summary of ORS' compliance audit of United) Ms. Hipp states that United "is currently operating all water and wastewater systems in compliance with all DHEC rules, regulations and consent orders." Ex. DMH-3 P.1. The latter testimony appeared to the Commission to be at odds with the former.

The Commission requested additional evidence from the Parties with regard to these violations and unsatisfactory DHEC ratings, and the apparent conflict in the testimony, but the Parties offered no explanation or evidence as to whether these issues had been resolved or whether any of them might impact in any way on whether the proposed rates should be deemed by the Commission to be fair and reasonable. These

issues were initially raised by Ms. Hipp's direct testimony or exhibits, but not subsequently explained or elaborated upon by the parties after specific inquiry by the Commission. Therefore, the Commission is without sufficient information to determine whether the proposed rates are just and reasonable, based upon the whole record.

V. CONCLUSION

While the Parties should be commended for their efforts to resolve this controversy, it is statutorily incumbent upon this Commission to independently determine whether the proposed rates in a settlement are just and reasonable.¹⁶ See S.C. Code Ann. Section 58-5-210 (1976). Moreover, the Supreme Court mandates that this Commission make findings which are sufficiently detailed to enable the Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings. Porter v. South Carolina Public Service Commission, 333 S.C. 12, 507 S.E. 2d 328 (1998). The evidence presented with the settlement agreement is insufficient to allow us to make findings that are sufficiently detailed to allow the Court to make the requisite determination.

Further, the Commission may exercise its independent judgment in setting rates and is not limited to adopting or rejecting the testimony of witnesses, as long as the Commission's Order is based on the evidence of record. See Kiawah Property Owners Group v. Public Service Commission of South Carolina, 359 S.C. 105, 597 S.E. 2d 145 (2004) (approving the Commission's decision to reject the testimony of a Company accountant when setting an operating margin). Additionally, we take note of and adopt

¹⁶ Additionally, the quality of the Company's service is a recognized and necessary area of concern the Commission must consider in determining whether a proposed rate increase is justified. See Seabrook Island Property Owners Association v. Public Service Commission of South Carolina, *supra*.

the following language from Citizens Action Coalition of Indiana, Inc. v. PSI Energy, Inc., 664 N.E. 2d 401 (1993):

We note at the outset that “settlement” carries a different connotation in administrative law and practice from the meaning usually ascribed to settlement of civil actions in a court. While trial courts perform a more passive role and allow the litigants to play out the contest, regulatory agencies are charged with a duty to move on their own initiative where and when they deem appropriate. Any agreement that must be filed and approved by an agency loses its status as a strictly private contract and takes on a public interest gloss. Indeed, an agency may not accept a settlement merely because the private parties are satisfied; rather, an agency must consider whether the public interest will be served by accepting the settlement. 664 N.E. 2d at 406.¹⁷

This responsibility does not permit the Commission to merely “act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission.” Scenic Hudson Preservation Conference v. Federal Power Commission, 354 F. 2d 608, 620 (2d. Cir. 1965).

Mindful of these principles and its statutory duty, this Commission has a separate and independent obligation to review a settlement agreement and its ancillary issues.¹⁸

¹⁷ See also Pennsylvania Gas & Water Co. v. Federal Power Com’n, 463 F. 2d 1242, 1246 (D.C. Cir. 1972); Cajun Elec. Power Coop., Inc. v. F.E.R.C., 924 F. 2d 1132, 1135 (D.C. Cir. 1991); C. Koch, Administrative Law and Practice Section 5.81 (Supp. 1995); In re PSI Energy, Inc., 1994 WL 713737, Ind. U.R.C., Sep 07, 1994 (NO. 39498, 39786); In re Minnesota Independent Equal Access Corp., 1993 WL 596041, Minn. P.U.C., Dec. 10, 1993 (NO. P-3007/GR-93-1); Re Minnegasco, Inc., 143 P.U.R. 4th 416, 1993 WL 312274, Minn. P.U.C., May 03, 1993 (NO. G-008/GR-92-400); Potomac Elec. Power Co., 10 D.C.P.S.C 22, D.C. P.S.C., Mar. 03, 1989, (NO. 869, 9216); Re Washington Water Power Company, 95 P.U.R. 4th 213, 1988 WL 391268, Idaho P.U.C., July 22, 1988 (NO. U-1008-204, 22042); Re New England Tel. and Tel. Co., 70 N.H. P.U.C. 1036, N.H.P.U.C., December 10, 1985, (NO. DR 84-95, 17988); Public Utility Com’n of Texas v. Southwestern Bell Telephone Co., 960 S.W. 2d 116, Tex. App.-Austin, Sept. 11, 1997.

¹⁸ The Commission's duty to review all proposed settlements and compromises independently to determine whether the resulting rates are just and reasonable is not unique, or even unusual. Courts and administrative bodies are routinely called upon to review proposed settlements in cases where persons or

This duty goes beyond simply accepting what the Parties have placed in front of us in the form of a Settlement Agreement with minimal support. The Commission also has the duty to inquire as to matters which are apparently left unresolved in the Settlement Agreement, and whether their omission is reasonable. We simply cannot make the proper determinations from the minimal evidence provided by the Parties to this case.

The Commission's duty is not altered by ORS's statutory mandate to represent the public interest. In Bryant v. Arkansas Public Service Commission, 877 S.W. 2d 594 (1994), the Attorney General, who was, in fact, charged by statute with protecting the interests of all the parties in the case, did not join in a settlement Stipulation presented to the Commission. The Court upheld the Arkansas Commission's decision to adopt the settlement, holding that the Commission must make an independent finding, supported by substantial evidence in the record, that the settlement resolves the matters in dispute in a

entities who were not participants in settlement negotiations may nonetheless be substantively affected by the resulting settlement proposals agreed to by the participating Parties. For example, in Duncan v. Alewine, 273 S.C. 275, 255 S.E.2d 841 (S.C. 1979), the South Carolina Supreme Court rejected the settlement of a contested estate after finding that the lower court had failed its duty to determine the rights of the non-answering defendants before approving the compromise presented to it by the litigants.

Similarly, both the state and federal class action rules require that the court protect the interests of the class, including absent class members, and any dismissal or compromise of a class action is subject to review and approval by the court. See, S.C.R.C.P. 23(c); F.R.C.P.23(e). The federal rule explicitly provides that the court may approve a settlement "only after a hearing and on finding that the settlement, voluntary dismissal, or compromise is fair, reasonable, and adequate." F.R.C.P. 23(e)(1)(C). This duty cannot be discharged by summarily approving a settlement proposed jointly by the representative plaintiffs and the defendant, even where there have been no appearances by intervenors or objectors. Rather, the court must make a finding that the settlement is fair, reasonable, and adequate. In the present case before us, the Commission likewise has an independent duty to determine whether the settlement proposed by the Parties is just and reasonable.

The Family Court also is charged with the duty to review independently all settlements. "When approving a settlement agreement, a family court judge must, first, determine if assent to the agreement is voluntarily given, and, second, determine if the agreement is 'within the bounds of reasonableness from both a procedural and substantive perspective.'" Blejski v. Blejski, 325 S.C. 491, 497-98, 480 S.E.2d 462, 466 (S.C. App. 1997), citing Burnett v. Burnett, 290 S.C. 28, 347 S.E.2d 908 (S.C. App. 1986).

way that is fair, just, and reasonable, and in the public interest. We agree with this reasoning.

Even with the participation in the present case of the Office of Regulatory Staff who must, according to law, represent the public interest,¹⁹ we must still make a separate and independent finding as to whether or not the settlement results in just and reasonable rates to the ratepayers of United. This, we simply cannot do, based on the evidence presented to us. Accordingly, we must reject the Settlement Agreement and deny the Application. See Hilton Head Plantation Utilities, Inc. v. Public Service Commission of South Carolina, supra. The Parties' presentation of minimal evidence in this case simply does not allow the Commission to meet its obligation.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. United Utility Companies, Inc. is a utility providing both water and sewer services to residents of South Carolina and is therefore under the jurisdiction of this Commission. The Commission held five public hearings on the application, in addition to an evidentiary hearing that allowed additional time for members of the public to be heard. The Company's objections to the public testimony and hearing exhibits must be overruled.

¹⁹ The public interest, as represented by the ORS, is statutorily defined as "a balancing of: (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer; (2) economic development and job attraction and retention in South Carolina; and (3) preservation of the financial integrity of the state's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services." S.C. Code Ann. Section 58-4-10(B) (Supp. 2005).

2. United and ORS submitted a Settlement Agreement along with prefiled written testimony and exhibits. The intervenors in this case became Parties to the Settlement Agreement.

3. After review of the settlement material, the Commission raised additional concerns involving matters addressed within the material to the attention of the Parties. This Commission had questions regarding the fairness of the proposed uniform rate structure, the Company's response to public witness' reports of sewer backups and the maintenance of the Company's lines, the Company's proposed flat rate billing tariff for sewerage services, the Company's response to complaints about its billing and collection practices, including allegations that customers had been billed for prior service to previous occupants of their residences, and that the Company had placed "orange tags" on the mailboxes of certain customers in Spartanburg County whom the Company believed to be delinquent in the payment of their bills, and the Company's compliance with PSC regulations that require reporting of violations of DHEC standards in light of violations indicated on ORS inspection reports appended to the prefiled written testimony supporting the Settlement. Comm. Directive (dated September 6, 2006) (attached hereto as Exhibit A to this Order).

4. At the settlement hearing, the parties called only two witnesses to testify in support of the settlement. These witnesses had no knowledge of the issues raised by the Commission. Although the parties also appended certain prefiled testimony to the Settlement Agreement, the parties failed to adequately address the Commission's concerns.

5. Based on the settlement hearing, and the lack of evidence provided on the outstanding issues, this Commission voted to reject the Settlement Agreement.

6. The Company and ORS indicated after the ruling rejecting the Settlement Agreement that they did not wish to present further evidence in support of their positions.

7. The application must also be denied, based on the lack of evidence provided by the Parties.

8. The Commission must determine whether or not proposed rates are just and reasonable. See S.C. Code Ann. Section 58-5-210 (1976).

9. The Commission cannot carry out this function if it lacks information relevant to this determination, therefore, it must declare the proposed rates unjust and unreasonable.

10. The Commission has a separate and independent duty to determine whether the rates proposed in a Settlement Agreement are just and reasonable.

11. This duty is not modified when one of the Parties is charged with protecting the public interest.

12. This Commission cannot make the necessary separate and independent determination as to whether or not the public interest would be served by acceptance of the Settlement Agreement in the case at bar, based on the evidence provided by the Parties.

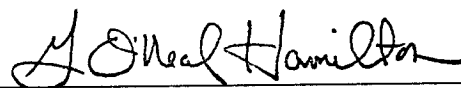
13. The Settlement Agreement must be rejected and the application must be denied.

14. The Company shall continue to have the opportunity to earn an operating margin of 8.34%, a rate of return on rate base of 9.31%, and a rate of return on equity of 10.00%, as set out in Order No. 2004-254.

VII. ORDER

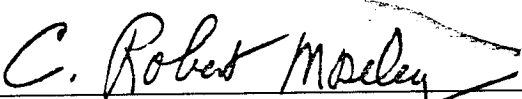
1. The Settlement Agreement is rejected.
2. The application for an increase in rates and charges is denied.
3. The Company shall continue to have the opportunity to earn an operating margin of 8.34%, a rate of return on rate base of 9.31%, and a rate of return on equity of 10.00%, all of which were established in Order No. 2004-254.
4. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



C. Robert Moseley, Vice Chairman

(SEAL)

Docket No. 2006-107-WS

Order No. 2006-593

October 16, 2006

Special Agenda Item 1**COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTERS

☐

DATE

September 6, 2006

MOTOR CARRIER MATTERS

☐

DOCKET NO.

2006-97-WS
2006-107-WS
2006-92-WS

UTILITIES MATTERS

☒**SUBJECT:**DOCKET NO. 2006-97-WS - Application of Tega Cay Water Service, Incorporated for Adjustment of Rates and Charges and Modifications to Certain Terms and Conditions for the Provision of Water and Sewer Service

- AND -

DOCKET NO. 2006-107-WS - Application of United Utility Companies, Incorporated for Adjustment of Rates and Charges and Modification to Certain Terms and Conditions for the Provision of Water and Sewer ServiceDOCKET NO. 2006-92-WS - Application of Carolina Water Service, Incorporated for Adjustment of Rates and Charges for the Provision of Water and Sewer Service

Discuss these Matters with the Commission.

COMMISSION ACTION:

In regards to Docket No. 2006-107-WS, I move that the Commission adopt the attached questions and pose them to the Parties immediately following this Meeting.

PRESIDING

Hamilton

MOTION

YES

NO

OTHER

APPROVED

☐

APPROVED STC 30 DAYS

☐

ACCEPTED FOR FILING

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DENIED

☐

AMENDED

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TRANSFERRED

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SUSPENDED

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CANCELED

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SET FOR HEARING

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ADVISED

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CARRIED OVER

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RECORDED BY

Schmieding

CLYBURN

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HOWARD

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WRIGHT

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Session: Special

Time of Session 12:30 p.m.

Mr. Chairman, as the parties prepare to present their settlement agreement to the Commission on Friday, I would like to alert them to some issues that I believe will be important to the Commission in considering this settlement. Therefore, I would move that the Commission request that the parties present testimony and introduce evidence to would address the following issues.

1. Does United Utilities maintain records of reported backups in its sewer systems? How many complaints of sewer backups were received within the test year, and how were they resolved?
2. Please elaborate on the efforts by United Utilities to prevent sewer backups. What measures does CWS employ to prevent sewer problems, and how they compare to applicable industry standards?
3. Explain why the Commission should find that flat-rate sewerage billing is just and reasonable. Absent any issues with regard to metering, why do the parties believe that a flat rate billing scheme is superior to one based upon individual usage?
4. Has UUC received any complaints from its customers of being billed for water and/or sewerage service arrearages incurred by previous residents? How have any such complaints been resolved?
5. Has UUC received any customer complaints pertaining to its collection practices? Is UUC aware of allegations that its agents or employees placed orange tags on the mailboxes of certain customers in Spartanburg County whom they believed to be delinquent in paying UUC's bills? What, if any, measures have been taken to ensure that UUC agents and employees engage in fair and lawful collection practices?
6. Please explain UUC's position with regard to its obligation to file with the Commission a notice of any violation of PSC or DHEC rules pursuant to S.C. Code Ann. Regs. 103-514. Would a finding by DHEC that ammonia-nitrogen discharge limits had been exceeded trigger the obligation by UUC to file a notice with the Commission? Please elaborate.
7. Regarding UUC's compliance with DHEC standards, Dawn Hipp's prefiled testimony offers some general statements regarding compliance with DHEC standards and general housekeeping at the UUC systems. Several questions arise regarding that testimony in light of the site reports attached as DMH4 to her testimony. It would be helpful for the parties to explain the scope of her evaluation and conclusions since not all sites were selected for testing and several

Docket No. 2006-107-WS

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systems that underwent a compliance inspection were found to be unsatisfactory by DHEC.